

HOUSE BILL No. 1637

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-13-12; IC 5-20.

Synopsis: Funding for foreclosure counseling. Provides for an assessment on financial institutions designated as a depository of public funds for purposes of providing sufficient money to provide foreclosure prevention counseling and assistance programs.

Effective: Upon passage.

Bardon

January 16, 2009, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1637

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-13-12-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board for
3 depositories consists of the governor, the treasurer of state, the auditor
4 of state, the chairman of the commission for financial institutions, the
5 chief examiner of the state board of accounts, and four (4) members
6 appointed by the governor all of whom must be residents of Indiana
7 and have had substantial expertise in commercial lending with
8 depositories. No more than two (2) of the four (4) appointees may
9 identify with the same political party. The terms of the appointed
10 members extend for four (4) year periods. Each appointed member
11 holds office for the term of this appointment and serves after the
12 expiration of that appointment until the member's successor is
13 appointed and qualified. Any appointed member may be removed from
14 office by, and at the pleasure of, the governor.

15 (b) The officers of the board consist of a chairman, a
16 secretary-investment manager, a vice chairman, and other officers the
17 board determines to be necessary. The governor shall name a member

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of the board to serve as its chairman. The treasurer of state shall serve as the secretary-investment manager of the board. The board, by majority vote, shall elect the other officers. Officers, except the secretary-investment manager, shall be named or elected for one (1) year terms in January of each year. The members and officers of the board are not entitled to any compensation for their services but are entitled to reimbursement for actual and necessary expenses on the same basis as state employees.

(c) Five (5) members of the board constitute a quorum for the transaction of business, and all actions of the board must be approved by at least five (5) members. The board may adopt, amend, or repeal bylaws and rules for the conduct of its meetings and the number and times of its meetings, and shall hold regular and special meetings as prescribed in its rules. All meetings of the board are open to the public under IC 5-14-1.5. All records of the board are subject to public inspection under IC 5-14-3.

(d) Ten (10) days notice of the time and place of all meetings to determine and fix the assessment rate to be paid by depositories ~~on account of insurance on public funds or the establishment or redetermination of the reserve for losses of the insurance fund~~ shall be given by one (1) publication in a newspaper of general circulation printed and published in the city of Indianapolis. The time, place, notice, and waiver requirements for the members of the board for all meetings shall be determined by its rules. The secretary-investment manager of the board shall enter its proceedings at length in a record provided for that purpose, and the records of the proceedings shall be approved and signed respectively by the chairman or vice chairman and attested by the secretary-investment manager.

SECTION 2. IC 5-13-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Subject to the limitations prescribed in this chapter, the board for depositories may fix the assessment rate to provide **the following:**

(1) Assets in the fund sufficient to equal the reserve for losses of the fund for the insurance of public funds on deposit in depositories.

(2) **Sufficient money to provide foreclosure prevention counseling and assistance programs under IC 5-20-6, as determined by the board for depositories.**

Effective on July 1, and January 1, of each year, the board shall determine and fix the fair and reasonable assessment rate for each classification of deposit, if any, to be used by depositories in determining the assessments payable during the succeeding six (6)

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month period. This determination shall be made by the board before or as soon as practicable after the applicable July 1, or January 1.

(b) This subsection applies to the part of the rate set for purposes of subsection (a)(1). In fixing the rate, if any, the board shall consider the amount of public funds currently on deposit, the liabilities of the insurance fund, contingent and accrued, and the determination of the board on the amount of the reserve for losses of the insurance fund as set out in section 7(b) of this chapter. For any six (6) month period the maximum assessment rate that may be fixed by the board is two percent (2%). The board may lower or waive the assessment on any or all classifications of deposit if in its discretion it determines that a lower rate or waiver will not prevent the fund from attaining sufficient assets to equal the reserve for losses. If, at the beginning of any six (6) month period, no action has been taken by the board for depositories fixing the assessment rate, if any, on public funds for the succeeding six (6) month period, the assessment rate is the same rate, if any, in effect during the preceding six (6) month period. Whenever as of July 1, or January 1, the value of the assets in the fund equals or exceeds the reserve for losses, the board shall eliminate the assessment requirement for the succeeding six (6) month period for each classification of deposit.

~~(b)~~ **(c)** During any period when an assessment rate is in effect, the assessment base for each depository of public funds shall be determined monthly. The assessment base must be equal to the sum total of all the minimum balances of each classification of public funds on deposit in each and all accounts during the month, the minimum balance of each account being taken respectively as of the date on which it occurs. On or before the second day of each month in which an assessment rate is in effect, each depository shall compute the amount of the assessment due from it ~~to the insurance fund~~ on account of public funds on deposit with it during the preceding month. The amount of the monthly assessment, if any, is the product obtained by multiplying one-twelfth (1/12) times the assessment base for the month for which the assessment is being computed.

~~(c)~~ **(d)** During the time the assessment rate on public funds has been waived or eliminated by the board for depositories, the respective depositories are not obligated to pay any assessment but shall continue to prepare and file the reports that would otherwise be required to be prepared and filed under this chapter.

SECTION 3. IC 5-13-12-7, AS AMENDED BY P.L.1-2006, SECTION 100, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The board for

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depositories shall manage and operate the insurance fund. All expenses incident to the administration of the fund shall be paid out of the money accumulated in it subject to the direction of the board for depositories.

(b) Effective January 1 and July 1 in each year, the board shall before those dates redetermine the amount of the reserve to be maintained by the insurance fund. The establishment or any change in the reserve for losses shall be determined by the board based on a study to be made or updated by actuaries, economists, or other consultants based on the history of losses, earnings on the funds, conditions of the depositories, economic conditions affecting particular depositories or depositories in general, and any other factors that the board considers relevant in making its determination. The reserve determined by the board must be sufficient to ensure the safekeeping and prompt payment of public funds to the extent they are not covered by insurance of any federal deposit insurance agency.

(c) At the end of each biennial period during which depositories have had public funds on deposit under this chapter and paid the assessments levied by the board, the board shall compute its receipts from assessments and all other sources and its expenses and losses and determine the profit derived from the operation of the fund for the period. Until the amount of the reserve for losses has been accumulated, all assessments levied **under section 5(a)(1) of this chapter** for a biennial period shall be retained by the fund. The amount of the assessments, if any, levied by the board **under section 5(a)(1) of this chapter** shall, to the extent the fund exceeds the reserve for losses at the end of a biennial period commencing July 1 of each odd-numbered year, be distributed to the depositories that had public funds on deposit during the biennial period in which the assessments were paid. The distribution shall be made to the respective depositories in the proportion that the total assessments **under section 5(a)(1) of this chapter** paid by each depository during that period bears to the total assessments then paid by all depositories. A distribution to which any closed depository would otherwise be entitled shall be set off against any claim that the insurance fund may have against the closed depository.

(d) The board may invest, reinvest, and exchange investments of the insurance fund in excess of the cash working balance in any of the following:

- (1) In bonds, notes, certificates, and other valid obligations of the United States, either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or

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investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

(2) In bonds, notes, debentures, and other securities issued by a federal agency or a federal instrumentality and fully guaranteed by the United States either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

(3) In bonds, notes, certificates, and other valid obligations of a state or of an Indiana political subdivision that are issued under law, the issuers of which, for five (5) years before the date of the investment, have promptly paid the principal and interest on their bonds and other legal obligations.

(4) In bonds or other obligations of the Indiana finance authority issued under IC 4-13.5.

(5) In investments permitted the state under IC 5-13-10.5.

(6) In guarantees of industrial development obligations or credit enhancement obligations, or both, for the purposes of retaining and increasing employment in enterprises in Indiana, subject to the limitations and conditions set out in this subdivision, subsection (e), and section 8 of this chapter. An individual guarantee of the board under this subdivision must not exceed eight million dollars (\$8,000,000).

(7) In guarantees of bonds or notes issued under IC 5-1.5-4-1, subject to the limitations and conditions set out in subsection (e) and section 8 of this chapter.

(8) In bonds, notes, or other valid obligations of the Indiana finance authority that have been issued in conjunction with the authority's acquisition, development, or improvement of property or other interests for an industrial development project (as defined in IC 4-4-10.9-11) that the authority has undertaken for the purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(9) In notes or other debt obligations of counties, cities, and towns that have been issued under IC 6-1.1-39 for borrowings from the industrial development fund under IC 5-28-9 for purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).

(10) In bonds or other obligations of the Indiana housing and community development authority.

(e) The investment authority of the board under subsection (d) is

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subject to the following limitations:

(1) For investments under subsection (d)(1) and (d)(2), the portfolio of an open-end no-load management-type investment company or investment trust must be limited to:

(A) direct obligations of the United States and obligations of a federal agency or a federal instrumentality that are fully guaranteed by the United States; and

(B) repurchase agreements fully collateralized by obligations described in clause (A), of which the company or trust takes delivery either directly or through an authorized custodian.

(2) Total outstanding investments in guarantees of industrial development obligations and credit enhancement obligations under subsection (d)(6) must not exceed the greater of:

(A) ten percent (10%) of the available balance of the insurance fund; or

(B) fourteen million dollars (\$14,000,000).

(3) Total outstanding investments in guarantees of bond bank obligations under subsection (d)(7) must not exceed the greater of:

(A) twenty percent (20%) of the available balance of the insurance fund; or

(B) twenty-four million dollars (\$24,000,000).

(4) Total outstanding investments in bonds, notes, or other obligations of the Indiana finance authority under subsection (d)(8) may not exceed the greater of:

(A) fifteen percent (15%) of the available balance of the insurance fund; or

(B) twenty million dollars (\$20,000,000).

However, after June 30, 1988, the board may not make any additional investment in bonds, notes, or other obligations of the Indiana finance authority issued under IC 4-4-11, and the board may invest an amount equal to the remainder, if any, of:

(i) fifteen percent (15%) of the available balance of the insurance fund; minus

(ii) the board's total outstanding investments in bonds, notes, or other obligations of the Indiana finance authority issued under IC 4-4-11;

in guarantees of industrial development obligations or credit enhancement obligations, or both, as authorized by subsection (d)(6). In such a case, the outstanding investments, as authorized by subsection (d)(6) and (d)(8), may not exceed in total the greater of twenty-five percent (25%) of the available balance of

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the insurance fund or thirty-four million dollars (\$34,000,000).

(5) Total outstanding investments in notes or other debt obligations of counties, cities, and towns under subsection (d)(9) may not exceed the greater of:

(A) ten percent (10%) of the available balance of the insurance fund; or

(B) twelve million dollars (\$12,000,000).

(f) For purposes of subsection (e), the available balance of the insurance fund does not include the outstanding principal amount of any fund investment in a corporate note or obligation or the part of the fund that has been established as a reserve for losses.

(g) Except as provided in section 4 of this chapter, all interest and other income earned on investments of the insurance fund and all amounts collected by the board accrue to the fund.

(h) Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of any investment in any of the obligations listed in subsection (d).

(i) The board shall, when directed by the state board of finance constituted by IC 4-9.1-1-1, purchase the loan made by the state board of finance under IC 4-10-18-10(i). The loan shall be purchased by the board at a purchase price equal to the total of:

(1) the principal amount of the loan;

(2) the deferred interest payable on the loan; and

(3) accrued interest to the date of purchase by the board.

Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of the purchase of the loan under this subsection.

SECTION 4. IC 5-13-12-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12. The amount of the assessments, if any, levied by the board under section 5(a)(2) of this chapter shall be transferred at least monthly to the treasurer of state for deposit in the home ownership education account established by IC 5-20-1-27 within the state general fund. Money transferred under this section may be used only for purposes of foreclosure prevention counseling and assistance programs under IC 5-20-6.**

SECTION 5. IC 5-20-1-27, AS AMENDED BY P.L.145-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 27. (a) The home ownership education account within the state general fund is established to support: ~~the~~**

(1) home ownership education programs established under section 4(d) of this chapter; and

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(2) mortgage foreclosure counseling and education programs established under IC 5-20-6-2.

The account is administered by the authority.

(b) The home ownership education account consists of:

(1) fees collected under IC 24-9-9; ~~and~~

(2) civil penalties imposed and collected under:

(A) IC 6-1.1-12-43(g)(2)(B); or

(B) IC 27-7-3-15.5(e); **and**

(3) money transferred for deposit in the account under IC 5-13-12-12.

(c) The expenses of administering the home ownership education account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 6. IC 5-20-6-3, AS ADDED BY P.L.176-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **In addition to money provided for the program under IC 5-20-1-27**, the authority may solicit contributions and grants from the private sector, nonprofit entities, and the federal government to assist in carrying out the purposes of this chapter.

SECTION 7. **An emergency is declared for this act.**

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